

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA PROTECTION AND)
ADVOCACY SERVICES COMMISSION,)
et al.,)

Plaintiffs,)

v.)

INDIANA FAMILY AND SOCIAL)
SERVICES ADMINISTRATION, et al.,)

Defendants.)

No. 1:24-cv-00833-TWP-TAB

DEFENDANTS' OCTOBER 14, 2024 STATUS REPORT

On August 30, 2024, the Court entered a preliminary injunction ordering that FSSA “take immediate and affirmative steps to (1) arrange directly or through referral to appropriate agencies, organizations, or individuals, corrective treatment of in-home skilled nursing services to E.R. for a minimum of forty hours and G.S. for a minimum of eighty hours per week and, (2) reimburse the mothers for providing SFC in conjunction.” On September 9, 2024, the Court ordered FSSA to submit a status report related to the preliminary injunction within 7 days and every 14 days thereafter. Dkt. 59. On September 16, 2024 and September 30, 2024 FSSA filed its prior status reports, Dkts. 60 & 84, which FSSA incorporates by reference. As part of its status reports, FSSA also incorporated by reference the Declaration of Heather Dane (Dkt. 74-2) and E.R.’s care manager’s notes (Dkt. 75) filed on September 26, 2024. On October 1, 2024, the Court entered an amended preliminary injunction, which provided in part that “FSSA remains enjoined to file status reports every fourteen (14) days beginning October 14, 2024.” Dkt. 85. Pursuant to Document Nos. 59 and 85, FSSA submits the following status report:

Steps to Arrange In-Home Skilled Nursing Services

1. Since FSSA's last status report on September 30, 2024 (Dkt. 84), FSSA has continued to take steps to identify and arrange referral to appropriate resources for in-home skilled nursing services for E.R. and G.S. However, these steps by FSSA have largely been stymied by Plaintiffs' mothers. FSSA needs Plaintiffs' collaboration and engagement in this process. Plaintiffs and their mothers need to work with FSSA, care managers, and providers with respect to what days of the week and what hours of the day the nursing services are needed. Plaintiffs and their mothers should not be permitted to refuse to engage or otherwise disrupt FSSA's efforts to arrange in-home nursing services for E.R. and G.S. in light of receiving their desired relief in the Court's amended preliminary injunction requiring Plaintiffs' mothers to be compensated for attendant care services "until in-home nursing services are secured." (Dkt. 85).

2. FSSA's working group with staff from three divisions—Heather Dane (Chief Program Officer for Bureau of Disability Services, FSSA Division of Disability and Rehabilitative Services); Michael Cook (Director, OMPP Provider Services, FSSA Office of Medicaid Policy and Planning, Medicaid Provider Relations); and Erin Wright (Director of Access and Engagement, FSSA Division of Aging)—continue to coordinate and oversee FSSA's compliance with the preliminary injunction, including specifically FSSA's efforts to arrange in-home nursing services for Plaintiffs E.R. and G.S.

3. FSSA, through G.S.'s care manager and the working group identified above, has continued to communicate with G.S.'s most recent provider of pediatric in-home skilled nursing services, at Tendercare Home Health. This communication included following up about a meet and greet between G.S.'s mother and Tendercare on September 18, 2024. On October 9, 2024, Heather Dane (Chief Program Officer for Bureau of Disability Services at FSSA) spoke with the

Director of Nursing at Tendercare about availability of other nursing staff at Tendercare to cover some or all of the skilled nursing hours for G.S. However, FSSA understands that G.S.’s mother informed Tendercare that “I don’t care about nursing, just in this lawsuit.” She also informed Tendercare that “no nurse is going to work” and none of the nurses have the skills that she has as G.S.’s mother. FSSA is concerned that G.S.’s mother’s failure to engage and her comments to Tendercare—which was previously providing nursing services for G.S.—may result in Tendercare no longer being willing to engage or recruit additional nurses to provide skilled nursing services to G.S. In light of comments from G.S.’s mother, Tendercare also expressed concerns that G.S.’s mother will ultimately not accept 80 hours of skilled nursing, which is significantly more than was being utilized prior to this lawsuit.

4. Similarly, as previously reported in FSSA’s prior status reports (Dkts. 60 & 84) and the Declaration of Heather Dane (Dkt. 72-2), FSSA preliminarily identified a nursing agency—Grace at Work—with two available nurses, and E.R.’s care manager put E.R.’s mother in contact with Grace at Work to work out the scheduling details. E.R.’s mother has still not provided clear information regarding E.R.’s schedule and what days of the week E.R. needs the nurses. She has requested 12-hour shifts for Saturday and Sunday and 8-hour shifts Monday through Friday, but has not specified which days and what specific times. She has also requested that the shifts be staffed by a single nurse rather than more than one. She has at various times since the Court’s order made different requests with different totals, several exceeding the 40 approved hours. While E.R.’s mother has contacted his care manager and FSSA regarding her attendant care hours, neither his care manager nor Grace at Work have heard from E.R.’s mother further regarding follow-up questions about scheduling.

5. In addition to these two provider circumstances described above, FSSA continued to speak and coordinate with G.S. and E.R.'s care managers assigned through Area Agencies on Aging over the last two weeks, regarding identifying and arranging referral to appropriate providers of in-home skilled nursing services. FSSA also has continued to inform potential providers that FSSA provided an override of its usual system to preemptively approve the hours of in-home skilled nursing services identified in the Court's preliminary injunction order.

6. As previously reported, FSSA, through G.S.'s care manager agency, CICOA, has a referral request through Duett, which is an online referral service that CICOA is able to use to locate skilled providers.

7. As for G.S., FSSA, through the working group identified above, recently learned on October 10, 2024 that Elite Home Healthcare, LLC has a nurse available for approximately 40 hours of G.S.'s skilled nursing hours. FSSA is following up with Elite so that G.S.'s care manager can put G.S.'s mother in contact with the provider. This communication is ongoing.

8. FSSA, through G.S.'s care manager and the working group identified above, also followed up with the three skilled nursing providers that responded to G.S.'s referral request submitted through Duett – (1) Aveanna Healthcare; (2) Unique Personal Care LLC; and (3) Life's Touch Home Health. Additionally, FSSA, including through G.S.'s care manager and the working group identified above, has reached out to other potential providers about their availability. Below is the current status of that outreach:

Potential Provider for G.S.

| Provider | Response |
|----------------------------|--|
| Elite Home Healthcare, LLC | They have staff available for approximately 40 hours. FSSA is following up to put in contact with G.S.'s mother. |
| Aveanna Healthcare | Additional details provided to provider on October 2, 2024. FSSA is awaiting |

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|---|---|
| | response on whether they would need to hire additional staff and where they are at with recruitment. |
| Unique Personal Care LLC | FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |
| Life's Touch Home Health | Additional details provided to provider on October 3, 2024. FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |
| Team Select Home Care | Provider previously contacted G.S.'s mother. However, they would need to hire additional staff. |
| Your Healing Touch, LLC | They do not have staff available at this time. |
| Care United Home Health Care Agency LLC | Unable to staff because of age of Plaintiff. |
| Joy Health Services LLC | They do not have staff available at this time but will contact care manager if a nurse becomes available. |
| Bayada Pediatrics | FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |
| The Master's Touch Home Care | FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |
| Touch of Love Home Health Care Inc. | Provider reached out to G.S.'s mother. However, they would need to hire additional staff. |

9. If one or more of these providers has available nurses, G.S.'s care manager will ask the provider(s) to schedule a meet and greet between the provider and G.S.'s mother in order to meet the providers and discuss scheduling details. Again, this requires a willingness by G.S.'s mother to engage in the process.

10. As for E.R., Grace at Work (previously identified provider with two available nurses as described above) cannot begin providing services until E.R.'s mother identifies specific days of the week and specific times for the nursing shifts. FSSA understands there have been

previous discussions regarding the 12-hour weekend shifts requested by Ms. Carter, and that E.R.'s mother informed Grace at Work that she wants only one nurse rather than two nurses providing care. However, neither E.R.'s care manager nor Grace at Work have heard from E.R.'s mother regarding most recent outreach about scheduling.

11. In addition to the above, FSSA, including through E.R.'s care manager and the working group identified above, continues to request updates from the following providers about their availability to provide pediatric in-home skilled nursing services to E.R. Below is the current status of those responses:

Potential Providers for E.R.

| Provider | Response |
|---|--|
| Elite Home Healthcare, LLC | They would need to hire additional staff and have not had any interested candidates yet. |
| Alternate Care Solutions | Could only do 4 hours per week under probationary period. |
| Elders Journey Home Care LLC | They would need to hire additional staff. |
| Grace at Work Home Health | They have staff available but have not been able to finalize a schedule with E.R.'s mother. FSSA understands that E.R.'s mother informed Grace at Work that she prefers one nurse rather than several nurses providing care. |
| Vertical Home Health | They placed an employment ad for an RN and have not had any interested candidates yet. |
| Pediatric Plus | E.R.'s mother informed E.R.'s case manager that this provider didn't have any nurses available for her preferred days/times. E.R.'s case manager confirmed they do not have available nurses at this time. |
| Adaptive Nursing and Healthcare Services, LLC | FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |
| Hoosier Home Health | FSSA is awaiting response on whether they would need to hire additional staff and where they are at with recruitment. |

12. Additionally, FSSA, including through E.R.'s care manager and the working group identified above, has contacted and ruled out the following providers for various reasons, including because they do not provide pediatric skilled nursing or due to E.R. being outside of their service area: (1) Amedisys Home Health; (2) Help At Home Skilled Care; (3) Interim Healthcare of Bloomington; (4) Adaptive Nursing-Bloomington; (5) Hoosier Uplands Home Health Care; (6) Sapphire; (7) Schneck Medical Center Home Health Care; and (8) Help at Home, LLC

Compliance with Amended Preliminary Injunction

13. As required by the Court's amended preliminary injunction dated October 1, 2024, FSSA has taken steps to comply with the Court's injunction requiring FSSA "to allow the Individual Plaintiffs to continue receiving medically necessary attendant care services from their mothers in the amount approved by FSSA immediately before the policy changes challenged in this litigation took effect on September 1, 2024, until in-home skilled nursing services are secured for the Individual Plaintiffs."

Dated: October 14, 2024

Respectfully submitted,

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